



Ensuring Inevitability Of Liability For Corruption Offences In The Republic Of Uzbekistan

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ABSTRACT

In 2017, Uzbekistan approved the Strategy of development of the country for five years,[2] which included improvement of organizational and legal mechanisms for combating corruption, raising legal culture of the population, expanding interaction of the state with civil society institutions and the media, strengthening international cooperation in this area.

KEYWORDS

Corruption, law, Administrative Liability

INTRODUCTION

In order to implement this priority area for the first time in the history of the country, **Law "On Combating Corruption"** was adopted in 2017 [3] that defines state policies in this sphere.

Taking into account the requirements of the UN Convention against Corruption[4] , recommendations of the OECD Anti-

Corruption Network for Eastern Europe and Central Asia[5] , as well as analysis of best foreign practices (Great Britain, USA, France, Germany, Singapore, etc.), the State Anti-Corruption Program for 2019-2020 was adopted. [6]

Thus, within the program framework, mechanisms of informing state bodies about the facts of corruption have been improved, including through mobile applications, helplines and other "hot lines", as well as organizational and legal mechanisms for protection of persons reporting corruption offenses have been improved.

In 2019 alone, "helplines" of the prosecutor's office received 161,970 complaints, including complaints about facts of corruption.

For the purpose of immediate and timely notification of corruption offenses in bodies and institutions of the Ministry of justice, a special bot "@antikorbot" has been launched.

The Law "On Combating Corruption" establishes liability of officers and workers of state bodies, non-commercial and other non-governmental organizations for corruption offenses. It may be criminal, administrative, civil and disciplinary one.

Criminal liability for corruption crimes can be realized by conviction, as well as application of other measures of influence provided by the criminal law.

Although legislation of Uzbekistan does not contain notion of **corruption-related crimes**, in order to introduce a uniform classification practice of criminal offenses **joint decision of the General Prosecutor's Office and other bodies of criminal prosecution of 30.12.2019** attributed 13 crimes to the category of corruption. These include embezzlement, fraud using official position, bribing officers of both non-governmental organization and government agency, state-owned or self-government bodies, abuse of powers by officials of non-state commercial and other non-governmental organizations, receiving,

giving a bribe and intermediation in bribing, as well as legalization of income derived from the crimes listed above.

Persons who have committed crimes of corruption can be applied such punishment as **fine, restriction of freedom, mandatory public work, deprivation of certain rights and imprisonment for up to fifteen years. In addition, instruments, objects of crime and proceeds of crime are subject to confiscation.**

Over the past 3 years, within fight against corruption, **4,969** officials by **3,441** criminal cases were brought to justice (including 2018 - 1907, 2019 - 1339, 2020 - 1723).[7] (see Figures 1-2)

Law enforcement agencies are taking measures to ensure liability for crimes regardless of suspect's social status and position.

So, out of 4,969 officials prosecuted for corruption offenses, **97** were employees of republican level, **351** – employees of regional and **4,521** employees of district (city) departments of ministries, departments and organizations.[8] (see Figures 1-2)

To prosecute perpetrators of such crimes as embezzlement (2,522 persons), fraud (462), bribery of (67), abuse of power (23), abuse of power (82), negligence (69), forgery (51) and other crimes (979). [9] (see Figures 3-4)

Taking into consideration significant damage of corruption crimes caused to interests of society and the state, law enforcement agencies pay special attention to seizure of corruption proceeds or property in an equivalent value. So, in 2018-2020, reimbursement of damage of 2 trillion 626 billion 528 million soums, which accounted for

90 percent of the damage caused by corruption crimes.[10] (see Figures 1-2)

The **Code of the Republic of Uzbekistan On Administrative Liability**[11] considers bribing employee of state bodies, state-owned organizations or self-government institutions to the category of corruption administrative offenses. Over the past four years, over 3 thousand people have been brought to administrative responsibility for the above offenses.

Due to the fact that officials allowed cases of violation of legislation on the prevention of conflicts of interest, the Code of the Republic of Uzbekistan on Administrative Liability was supplemented by Art. 1758 that provides for liability for violation of public procurement legislation. [12]

Corruption crimes are latent and often associated with imperfection of existing institutional and legal basis. In this regard, a number of systemic reforms designed to shift away from a purely repressive to proactive measures responding preventive nature.

So, based on the requirements of Art. 6. Of the UN Convention Against Corruption, as well as experience of more than 40 foreign countries and recommendations of the Organization for Economic Cooperation and Development (OECD) , the UN Office on Drugs and Crime (UNODC UN) , the Council of Europe (CE and other international organizations **the Anti-corruption Agency** was formed as a body responsible for formation and implementation of state policy in the sphere of prevention and counteraction of corruption [13] .

In terms of ensuring inevitability of punishment for corruption Agency is empowered to redirect materials to law enforcement agencies

to initiate criminal cases against individuals in case there are indications of corruption offenses, submit to state bodies, organizations and their officials warnings on the inadmissibility corruption offenses, as well as taking measures to eliminate causes and conditions conducive to corruption.

Proceeding from the fact that ensuring inevitability of responsibility for corruption crimes cannot be ensured without active participation of civil society institutions, system and mechanisms of public control are being improved.[14] , as well as protection of victims, witnesses and other participants of criminal process .[15]

Thus, in May 2020, the Academy of the Prosecutor General's Office organized international web conference with the support of UNDP for national non-governmental non-profit organizations on the interaction of state bodies and NGOs in the fight against corruption, where experts representing national branches of Transparency International in Kazakhstan, Latvia, Russia and Slovenia informed participants about the experience of carrying out public control in the field of public procurement, observance of civil servants ethical standards, check their income tax returns, conducting anti-corruption expertise of legal acts and other issues related to the participation of civil society in promoting integrity and zero tolerance for corruption.

Also, in order to expand interaction of the academic community and civil society in the field of combating corruption and strengthening public control in this area, in November 2020, the Academy of the Prosecutor General's Office jointly with the Development Strategy Center and the National Movement “Yuksalish”, with the participation

of leading international experts of the INGO “Regional Dialogue, UNODC, University of Cambridge (UK), Hertie School of Governance (Germany), Transparency International, representatives of academia and civil society institutions held an international online videoconference “The Role of Applied Research in Anti-Corruption: Issues of Interaction between the Academic Community and Civil Institutions of the society”.

Based on analysis of best international practices (UK, USA, Italy, Singapore, France, Germany and others.) the Government adopted decree providing for **encouraging persons reporting corruption offenses or being otherwise assistive in the fight against corruption**. [16]

Due to the fact that ensuring inevitability of punishment for corruption is impossible without a well-functioning independent judiciary, a number of changes have been carried out within judicial system of Uzbekistan .

Based on the recommendations of the OSCE, OECD, UNODC and a number of other international organizations, the Supreme Court of the Republic of Uzbekistan adopted a number of acts aimed at ensuring strict observance by judges of the principle of inevitability of liability for committing criminal offenses of corruption. [17]

Law enforcement bodies pay special attention not only on providing inevitability of punishment for corruption, but also on the issues of early prevention of officials’ illegal actions.

In 2020, the prosecutor's office within supervision activities to ensure compliance with the rule of law, carried out 15021

inspections, 22783 protests, 11238 submissions, 13460 decisions and 19359 warnings (4814 for civil cases and administrative cases, 1641 for economic cases).

Based on World Bank recommendations, the International Monetary Fund, of Global Insight, as well as analysis of indicators of Uzbekistan in the Doing Business ranking, we approved Roadmap to reduce shadow economy and improve efficiency of tax authorities' activities “on the implementation of departmental action to fight shadow economy and corruption”. [18]

With the assistance of UNDP and KMPG international consulting firm (Italy) Anti-Corruption Compliance system is being implemented in state bodies and organizations with state participation from November 2020, as well as provision of disciplinary measures for employees. [19]

In ensuring inevitability of responsibility for corruption offenses, an important role is assigned to the implementation of international anti-corruption standards into the legislation of the Republic of Uzbekistan.

In particular, in the framework of implementation of the recommendations given to Uzbekistan in the results of **the fourth round of monitoring within Istanbul Action Plan to combat corruption OECD ACN**, administrative responsibility for making decision with conflict of interests, such mandatory elements as bribe intangible, promise and offer of bribe and others are being included in the framework of the new edition of Criminal Code. [20]

Based on the recommendations of the UNODC, UNDP and other international organizations regarding implementation of the requirements

of Article 20 of the UN Convention against Corruption, the new edition of the Criminal Code provides criminal liability for illegal enrichment. [21]

In ensuring inevitability of punishment for corruption offenses, an important role is played by training and advanced training of law enforcement and judicial bodies personnel. To this end, special courses on combating corruption, identifying corruption crimes and ensuring inevitability of liability have been introduced into the curricula of law enforcement advanced training educational institutions.

In order to strengthen expert potential of government agencies, the Academy of General Prosecutor's Office launched targeted master's program "Combating Corruption" since 2019 with the participation of leading international experts from Austria, Georgia, Slovenia, the USA, France, Sweden, the Republic of Korea, Ukraine and support of international partners (INGO "Regional Dialogue", UNDP, World Bank, UNODC UN, OECD, UNESCO, OSCE, the Council of Europe, Tetra Tech project of USAID, JICA, INL, German Foundation for international legal cooperation (IRZ), International Anti-Corruption Academy (Vienna), the Institute of law initiative of Central and Eastern Europe (CEELI), Berlin Graduate School of Democracy and Good Governance (Germany), Cambridge (Great Britain), Lund (Sweden) universities and others).

At the same time, we believe that there are still problems of both institutional and legal nature in the field of combating corruption. In particular, activities of state civil servants and law enforcement officers are not sufficiently regulated:

No established uniform requirements to the order of service;

No restrictions and prohibitions for public servants;

No order of declaring civil servants and their families' assets, income and large income;

Such offenses as abuse of influence, illicit enrichment are not criminalized;

Conflict of interest prevention mechanism is not established or sufficiently regulated;

System of competitive selection for civil service is not introduced;

Insufficient attention is paid to the issues of preventing primary manifestations of corruption such as nepotism, crownism, favoritism, clientism, lobbyism, protectionism.

Uzbekistan is quitting practices of criminal-legal response to corruption cases and using the model of early prevention of corruption offenses, identification of risks of officers' antisocial behavior, minimization of discretionary of their powers, maximum involvement of civil society, the media and citizens in the fight against corruption offenses, radically improving quality of governance, transparency of activities of state bodies, expertise of public anti-corruption bodies and that it is important to maximize the involvement of every leader, every public authority in the systematic struggle against all manifestations of corruption.

Analysis of international standards and best foreign practice in the field of ensuring the inevitability of liability for committing corruption crimes showed that activities in this area can be optimized by:

Improving the activities of investigative bodies to investigate corruption offenses,

Introduction of the latest ICTs for effective investigation and prosecution of complex financial crimes, improvement of financial investigation of corruption and official crimes,

Establishing criminal liability for any unlawful advantages, both material and non-material,

Introduction of modern means and methods of disclosing modern forms and methods of committing corruption crimes,

Strengthening mechanisms to protect whistleblowers,

Development of international cooperation in this area,

Active involvement of citizens and civil society institutions in the processes of identifying corruption offenses, etc.

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